THE ONTARIO HUMAN RIGHTS CODE,

R.S.O. 1970, c. 318, as amended

IN THE MATTER OF: The complaint, as amended, of Ms. Etna Blake of Etobicoke, Ontario, that she was discriminated against in the occupancy of a commercial unit because of her race, colour, ancestry and/or place of origin, by Mr. N. Loconte, 2843 Weston Road, Ontario, contrary to paragraph 3(1)(a) and/or (b) of the Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended.

APPEARANCES: Mr. Thomas Lederer, Esq., Ministry of the Attorney General - Counsel for the Ontario Human Rights Commission.

Mr. Frank Loconte, Esq., Counsel for Mr. N. Loconte.

Mr. Stanley Gelman, Esq., Counsel for Ms. Etna Blake.

A HEARING BEFORE: Peter A. Cumming, appointed a Board of Inquiry in the above matter by the Minister of Labour, The Honourable Robert Elgie, by form of appointment dated September 5, 1979, to hear and decide the complaint.

DECISION AND ORDER

The Evidence

The Complainant in this hearing, Mrs. Etna Blake, alleges she was discriminated against in the occupancy of a commercial unit because of her race, colour, ancestry and/or place of origin by Mr. N. Loconte, 2843 Weston Road, Weston, Ontario, contrary to paragraphs 3(1)(a) and/or (b) of The Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended. These provisions read:

> "3.-(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,
>
> (a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or
>
> (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any housing accommodation,
>
> because of race, ... colour, ... ancestry or place of origin of such person or class of persons or of any other person or class of persons."

The Complainant in this matter is 51 years old, a widow, and mother of three children, who resides in Etobicoke. She is a self-employed business person, the active partner in a hairstyling salon business at 59 Dundas Street West, Mississauga, known as "Leone's Hair Salon" (hereinafter called "Leone's"). Mrs. Blake emigrated to Canada in 1965 from Jamaica. She is well-trained as a hairdresser/beautician and has worked as such for some thirty-three years. Mrs. Blake first went into business for herself in 1970, and then purchased Leone's on September 13, 1976 (Exhibits #4 and #5 include the Offer to Purchase and Bill of Sale) in partnership

with Hedley Montgomery of Toronto, from Mrs. Rita Leone. They took control of the business October 13, 1976. Both Mrs. Blake and Hedley Montgomery are black. Mr. Montgomery has been a 'silent partner' and for virtually all purposes Mrs. Blake has operated the business on her own at the times relevant to this Complaint.

The premises known as 59 Dundas Street West, Mississauga are owned by Isabella and Nicola Loconte. These premises are clearly a "commercial unit" within the meaning of section 3(1)(a) and (b) of The Code. The lease (Exhibit #4) for the premises was assigned (the Assignment of Lease was filed as Exhibit #7) by the previous tenant (Mrs. Rita Leone, the owner of Leone's) to Mrs. Blake and Mr. Montgomery with the consent of the Locontes, without the Locontes meeting either Mrs. Blake or Mr. Montgomery. Nicola Loconte, the Respondent to this Complaint, in fact makes all decisions as landlord in respect of the property and Mrs. Loconte is not a party to the proceeding nor was she a witness.

Nicola Loconte, a supermarket proprietor, purchased 59 Dundas Street West, Mississauga in March, 1973 as an investment. Mr. Vern Leone operated Leone's (with Rita Leone as the nominal owner of his business) at the time ownership to the premises was assumed by the Locontes.

Mr. Vern Leone stayed on for some weeks after Mrs. Blake and Mr. Montgomery purchased his business, to familiarize the purchasers with the business. Mr. Leone lived in an apartment above Leone's.

About November 1st, Mr. Leone telephoned Mr. Loconte for the purpose of having him come to Leone's to meet Mrs. Blake, his new tenant.

Mrs. Blake testified that when Mr. Loconte arrived at Leone's, and she introduced herself, he refused to shake hands with her and was taken aback (Evidence, p. 22). She said Mr. Loconte then went and knocked on Mr. Leone's apartment door and Mr. Leone came downstairs and outside to where he and Mr. Loconte had a very heated argument. Mrs. Blake said that they actually "struck each other" (Evidence, p. 23). Mrs. Blake testified that she listened through a slightly opened door, and overheard Mr. Loconte say to Mr. Leone words to the effect, "why do you have to sell the business to a nigger because I don't want to have anything to do with these people?" (Evidence, pp. 22-23, 72, see also the Complaint, being Exhibit #3.)

Verne Leone, age 42, testified as well. He said that in obtaining from Mr. Loconte his consent to assigning the lease, there were no questions about the identity of the new tenants, other than as to whether they were financially sound.

Mr. Leone confirmed he had telephoned Mr. Loconte to come and meet his new tenant. He said when he answered his apartment door to Mr. Loconte's knock, Mr. Loconte appeared very upset and showed great disappointment, and asked why Mr. Leone had sold his business to "such kind of race of people". (Evidence, pp.151, 158, 159, 160, 161). Mr. Leone's testimony was certain in stating that

the clear inference he had was that Mr. Loconte's words meant reference to Mrs. Blake's colour. Although Mr. Leone did not recall an explicit reference to the word "nigger" being used, Mr. Leone said Mr. Loconte was so upset that he feared Mr. Loconte might strike him.

Mr. Loconte's testimony was that in response to Mr. Leone's telephone call he had gone to the premises, introduced himself to Mrs. Blake as the owner, whereupon Mrs. Blake had thrown him out. He was then upset and mad at Mrs. Leone for having obtained such a rude person as tenant and suggested any references to Mrs. Blake were in the context of her having been rude to him (Evidence, pp.281 - 283), but admitted on cross-examination that he did use words to Mr. Leone in the nature of "why did you sell to such a race of people?" (Evidence, pp.362, 363).

Mr. Loconte is a hard-working, industrious individual. It is also clear that he is quite emotional, quick-tempered and stubborn, and very self-righteous.

I accept the testimony of Mrs. Blake as to the nature of her first meeting with Mr. Loconte. Mr. Leone was an independent, and impressive witness, and his evidence really confirmed Mrs. Blake's evidence on every essential point.

Hedley Montgomery, age 45, Mrs. Blake's silent partner at the relevant times, testified that he spoke with Mr. Loconte two or three times. He said he called Mr. Loconte after Mr. Loconte's first encounter with Mrs. Blake and was met with the response by Mr. Loconte to the effect that if he knew that "you people was going to buy the business, I would prevent the sale" which Mr. Montgomery interpreted as meaning

that this view was expressed by Mr. Loconte because Mr. Montgomery and Mrs. Blake were black. (Evidence, p.111).

Leaving aside for the moment the question as to whether Mr. Loconte's statements and actions at his first meeting with Mrs. Blake constituted discrimination within the meaning of the Code, it is clear that his actions and statements were discriminatory in fact. Mr. Loconte undoubtedly directed his anger mainly at Mr. Leone, to the point, at the least, of giving an impression he would use physical violence against him. But his anger toward Mr. Leone was entirely because Mr. Leone had assigned his lease to black tenants. He objected to Mrs. Blake as a tenant because she is black and his conduct toward her was reprehensible.

The morning after the above-described encounter, Mrs. Blake said she telephoned Vern Cunningham, the real estate agent who negotiated the purchase of the business on her behalf. Mr. Cunningham testified she was very upset and crying on the phone. Mr. Cunningham testified that Mrs. Blake said Mr. Loconte "was very angry with her and names were mentioned like "nigger" (Evidence, p.172). He said he later telephoned Mr. Loconte that day about the situation and Mr. Loconte said in fact he was upset at Mr. Leone, that as he had black people working in his food store he could not be considered to be discriminatory, and apologized if Mrs. Blake was left with the false impression that she had been discriminated against (Evidence, p.173). Whether Mr. Loconte was truthful or not in his explanation (and I find he was not) or sincere in his apology (and I find he was not) Mrs. Blake testified she accepted it for what it was worth and was prepared to "leave it at that" (Evidence, pp.69, 70).

A further allegation turned upon Mr. Loconte's putting the premises up 'for sale'. The Complainant asserted that this was to harass the Complainant because of her colour and race.

Michel Ursini, Mr. Loconte's real estate agent, testified that the 59 Dundas St. W. property was first listed for sale by Mr. Loconte in October, 1977 (Evidence, p.377, Exhibit #16 being produced in support), and that he had continued difficulties with Mrs. Blake in trying to show the premises to prospective purchasers, due to the limited times she would make the premises available for viewing (Evidence, pp.378, 379). Although the listing agreement (Exhibit #16) filed by Mr. Ursini, is dated 27 October, 1977, it is possible that a sign was placed in the premises at an earlier date, without an agreement.

Mrs. Blake on the other hand, testified that a "for sale" sign went up very shortly after she moved in, (Evidence, p.38)(her evidence in this regard being supported by that of Vern Cunningham) (Evidence, p.409) and that Mr. Ursini's attempts to show prospective purchasers the premises would have disrupted her business and that, therefore, she wanted them to come only at certain times (Evidence, pp.73, 74, 413, 414).

The 'asking price' for the property seems to have been unrealistically high. Mr. Loconte had paid $80,000. in 1974, and listed it in 1977 for $129,000 (Evidence, p.373). He claimed he received an offer for $112,000. which he refused (Evidence, p.374). In any event, the property was unsold as of the date of the hearing, November 8, 1978, and Mr. Ursini's listing index, Exhibit #18 shows a reduced asking price of $125,000. as of June 30, 1978.

On all the evidence, I accept the evidence of Mrs. Blake as to when the 'for sale' sign went up. In my view, although Mr. Loconte was prepared to sell the premises if he could receive a price above the market price, at least one reason for putting the 'for sale' sing up, and trying to show the premises, was to harass Mrs. Blake whom he did not want as a tenant.

There was further evidence of harassment.

Mrs. Bernice Bryce, a customer of Mrs. Blake's testified she was

present in Leone's premises one day about March, 1978, when Mr. Ursini came into the salon and had a heated discussion with Mrs. Blake in which Mr. Ursini made a racial reference (Evidence, pp.186, 189) and Mrs. Blake threatened to throw him out. Mr. Bryce is black. She was an impressive, impartial witness. I accept her evidence. Although Mr. Loconte cannot be held responsible for the remarks of his real estate agent (in the absence of any evidence suggesting the agent was expressing the views on behalf of his principal), the incident is pertinent to the question of credibility and also shows generally the position Mrs. Blake felt herself to be in which respect to her landlord and his attitude toward her. She understandably felt she was being harassed (Evidence, p.38).

The next matter to be considered is the manner of payment of rent. There was testimony that Mr. Loconte suggested that the rent due from Mrs. Blake be paid through Mr. Leone as intermediary, but that Mr. Leone refused (Evidence, p.153). There was further testimony that Mrs. Blake had to leave the rent with a nearby shopkeeper, a tailor, from whom Mr. Loconte would pick it up (Evidence, p.154). There were two rental cheques returned by the bank to Mr. Loconte as being "NSF". These were paid after Mr. Loconte called Mrs. Blake, she explaining in her testimony that on one occasion the cheque had been misdirected to the wrong branch of her bank, and on the other that she was held up in making the necessary covering deposit because she was attending a court hearing involving a son. She tesitified that on a third occasion Mr. Loconte called her to say the rental cheque was not honoured, and came down to her premises, whereupon she determined the cheque in fact had not been presented to her bank for payment, and that she went to the bank, got the money, and on returning to the store gave Mr. Loconte the money, although he refused to take it directly from her hand (Evidence, p. 29). Mr. Loconte denied this last assertion, countering that his only real concern was her apparent lack of funds and her properly meeting her obligation.

Certainly Mr. Loconte is within his rights in expecting, and demanding, rental payments as and when required by the lease, and he too in turn had mortgage and property tax payments obligations in respect of the property. However, Mr. Leone testified that on various occasions when he had the business that he would be late in making payment of his rent, but would call Mr. Loconte and found him patient and understanding (Evidence, pp.155, 156).

In my view, the evidence as to the payment of rent subsequent to Mr. Loconte's first encounter with Mrs. Blake, gives further support to Mrs. Blake in her contention that Mr. Loconte was treating her differently from the way he would treat another tenant who was of a different colour and racial origin. Mr. Leone's testimony was clearly to the effect that he inferred from all the circumstances that Mr. Loconte continued to show resentment toward Mrs. Blake because of her colour and race (Evidence, pp.154, 155).

The original lease was for a rent of $300. per month, and expired March 31, 1978, but the lease (Exhibit #4) contained the following term:

> The Lessees shall have the privilege of renewing the within lease for a further term of three years of its maturity upon the same terms and conditions as herein contained except the rent which is to be negotiated on the basis of the rent for comparable premises in-like location and shall be subject to arbitration is no agreement is reached. Save that there shall be no further renewal. The Lessee shall have the first right of refusal on any sale of the premises by the Lessor.

There was serious conflict about the question of renewal.

Mrs. Blake testified that a week before the expiry of the lease Mr. Loconte came to the store with another man (Mr. Ursini, who later testified) and asked if she wanted to renew, that she said yes, and Mr. Loconte said she would hear from Mr. Loconte's lawyer. (Evidence, pp.29, 30).

Rent has been paid at $600. per month since then and the evidence was not clear at all as to whether this is being done on a basis of being conditional by agreement upon the outcome of this hearing (Evidence, pp.37, 72, 82). It is clear, at the least, that the rent of $600./month was paid under protest (Evidence, pp.134, 136, 338, 344.) There have been two late payments (Evidence, p.295, Exhibits #10 and #11).

However, it would seem that Mrs. Blake received a letter dated March 1, 1978 (Exhibit #8) demanding to know whether she wished to renew, at a rental of $675. a month, shortly after March 1. Mrs. Blake said she tried unsuccessfully to deal with Mr. Loconte and then turned the matter over to Mr. Montgomery. He testified he called Mr. Loconte's lawyer but did not reach him, and called Mr. Loconte but was told his lawyer would fix the rent and received no offer to negotiate or arbitrate (Evidence, pp.113, 114). On cross-examination Mr. Montgomery recalled that he in fact spoke with Mr. Loconte's lawyer in March and it was explained to him that the rent control legislation in force in Ontario did not limit a landlord of a commercial property as to rent (Evidence, pp.127, 128).

Mr. Loconte testified he went to the premises with Mr. Ursini before March 1 to ask Mrs. Blake if she wanted to renew the lease. Mr. Loconte said she advised him she wanted to renew, but he was to speak with her lawyer (Evidence, p.289). Mr. Loconte said that because of this approach, he in turn went to his lawyer and the letter of March 1 was consequentially written (Exhibit #8). Exhibit #8 makes no reference to any meeting between Mr. Loconte and Mrs. Blake, and, if anything, by its language on the face of it implies it was sent before any meeting between the landlord and his tenant.

In my view, it seems that Mrs. Blake and Mr. Montgomery did not act as quickly as was prudent in concluding the renewal. However, it seems on all the

evidence that they had told Mr. Loconte they intended to renew prior to the expiry of the existing lease (Evidence, pp.341 to 346). The evidence on the record as well (Exhibit #9 - Evidence, p.36) is that their counsel advised Mr. Loconte's lawyer on March 30 that the lease was being renewed. There was no evidence denying this assertion, although it is clear the evidence could have been given if it was not the fact. As well, a letter of April 6 (Exhibit #13) from counsel for Mrs. Blake to counsel for Mr. Loconte indicated the lease was to be renewed, said a rent of $450./month was being tendered and that arbitration should be proceeded with if this was not satisfactory.

Neither the Lessor, Mr. Loconte, nor the Lessee, Mrs. Blake sought arbitration in respect of the outstanding, disputed issue as to the amount of rent to be paid (Evidence, pp.55, 56, 80).

Mr. Loconte has had two supermarket businesses over the past eight years as a tenant. He is an experienced businessman. Although he testified he does not read English, he admitted on cross-examination that he was well aware of the terms of the renewal in respect of his lease with Mrs. Blake (Evidence, pp. 353 to 356).

There was no new rent agreed upon by April 1, 1978, although it was clear the lease had been renewed. There was no rent at all paid April 1 and it was not until at least April 11 that a cheque for $450. (dated April 11) (Exhibit #13) was sent as being the proferred amount of rent by the tenants. This cheque was never cashed. (Evidence, p.289, 357).

Mr. Loconte knew as of April 1 that the lease had been renewed, and his lawyer knew as well, but nevertheless had a bailiff lock-up the premises on or before April 13, saying he did so on the advice of his lawyer (Evidence, pp. 344, 345, 357, 358). The premises were reopened April 13 through the actions of the counsel for the parties (see Exhibit #9).

Counsel for the Respondent argued that an oral renewal was ineffective (Evidence, p.462). However, in my opinion the Landlord and Tenant Act allows for an oral lease (s.81(e)). In any event Exhibit #9 represents an uncontradicted written confirmation of the renewal. As well, in my opinion the lessor's conduct subsequent to the oral renewal would constitute an estoppel.

Certainly Mr. Montgomery, Mrs. Blake, and their counsel, would have been well advised to have tendered rent of at least $300. as of April 1, and to have attempted to proceed to arbitration. Common sense dictated that $300. should have been paid April 1.

However, on all the evidence, it is my view, and I so find, that Mr. Loconte's treatment of Mrs. Blake throughout the initial tenancy, with respect to the renewal, and with respect to having the bailiff seize the premises (without warning) were all due to the basic reason that he did not want someone of her colour and racial origin as a tenant. Once she had become a tenant, he was forced to tolerate her but did so only on a basis of being very nasty and rude toward her. The worst instance was on the occasion when he first met her, but his ill treatment of her continued in the way he initially required her to pay the rent by not taking it directly, and his manner of dealing with her on the question of the renewal. I do not believe he would have exercised his right of re-entry on or before April 13, without communication with the tenant, if she had not been black. (Although the issue as to the lawfulness of the re-entry was not argued, I have noted that the lessor was apparently within his rights, as the lease provides for immediate re-entry upon default for payment of rent, and thus takes the lease outside of s.18(1) of the Landlord and Tenant Act, c.236,R.S.O. 1970).

In contrast to the way Mr. Loconte treated Mrs. Blake in negotiations, evidence was led as to his dealing with another tenant.

Lois Lipieck testified she had assumed the tenancy to the apartment over the salon from Vern Leone, (Evidence, pp.192 to 196) sub-letting for $150. per month (the rent under the lease being $130. per month). Her lease was at an end as of March 31, 1978. She testified Mr. Loconte initially demanded $240. per month for a renewal, that she had difficulty in reaching him, but that he was willing to negotiate, and that she was able to come to agreement on a rent of $210. per month. Mrs. Lipieck said that at no time did Mrs. Loconte suggest she must see his lawyer.

Mrs. Blake may have been dilatory in respect of payment of the rent, but this was due to the new amount of rent not yet being determined (Evidence, pp. 137). Her actions at the time of renewal were due to naivete or uncertainty or the lack of good or prompt advice. She was confused as to the rent control legislation, not realizing at first that it pertained only to residential tenancies. She may have been ignorant, she may have delayed, and she may have been in a continuing marginal financial position, but she impressed me as being an honest, decent, conscientious person. She was in a difficult situation, and she was fearful because she had been abused because of her colour and race. She was not intentionally delaying or being difficult. The lessor, Mr. Loconte, knew the lease had been renewed. He knew the rent remained to be negotiated. He was demanding $675. per month (Exhibit #8) but knew his demand had not been accepted. The tenant was tendering $450./month which was more than the rent of $300. a month for the initial term. This was known to the Lessor's solicitor on April 10, 1978 (see Exhibit #12). The Lessor was not prepared to negotiate further. There was a stalemate in the negotiations, but I do not interpret the 'renewal clause' in the lease as then placing the lessor in a stronger position than the lessee. Arbitration was not attempted by either party upon no agreement being reached as to the amount of rent upon the renewal.

The Complainant asserted that the rent demanded for the renewal, $675. per month (the demand being lowered to $600./ month as of April 13) was higher than the fair market rental value, and that she was being discriminated against in this regard.

A lessor is, of course, entitled to demand whatever rent he wishes in the marketplace which is, in essence, whatever a prospective lessee will pay.

I have found, on all the evidence, that in the instant situation there was a renewal of the lease for the three year period April 1, 1978 to March 31, 1981. It is also clear on the evidence, and I so find, that there no agreement as to the amount of rent for the renewal term, nor was arbitration sought by either party. The lessee has been paying $600./month rent since April 1, 1978 under protest, pending the outcome of this hearing.

There was some evidence as to what the fair market rental value of the premises would be.

Charles Folz, a Human Rights Officer for the Ontario Human Rights Commission in 1978, testified that he investigated the question of comparable rents in the plaza. He said there were eight condominium units within the plaza, three of which were rental units (Evidence, p.199). One three year lease (re #71 Dundas) commencing May 1, 1978 provided for rent for two years at $500./ month, and for $550./month for the third year (Evidence, p.200). It should be noted that this tenant apparently gave up the premises because as of July 1, 1978 a rental of $600./month was being paid for a five year term but with a five year renewal option period, Exhibit #15, p.11). A second lease, (re #67 Dundas) was entered into in 1977 for a two year term, at $425./month (Evidence, pp.200, 202, 203, Exhibit #15, p.11). The third lease at 69 Dundas, provided for a rent of $600./month (Evidence, pp.201, 202, 206, 207; Exhibit #14, and p.11) of Exhibit #15). However, this lease commenced in 1978 (Evidence, pp.268,.

269) and was for a nine year term, with the rent stepped-up in 1983 to $700./month (Evidence, pp.208, 209). It is clear to me on all the evidence (Evidence, pp.268 to 270) that it is fair to conclude that the tenant in respect of that lease was prepared to pay a higher rent at the inception of the lease given the length of the term and that the rent would only be $700. for the last four years thereof.

The Ontario Human Rights Commission hired a professional appraiser, Paul M. Peppiatt, to investigate and prepare a report, "Rental Study of: A Commercial Property 59 Dundas Street West, Mississauga, Ontario" (filed as Exhibit #15). Quite commendably, as the Commission did not want to call Mr. Peppiatt as its witness given the nature of his report, the Commission made the Respondent's counsel aware of the appraisal, so that Mr. Peppiatt was called as a witness on behalf of Mr. Loconte.

Mr. Peppiatt's report (Exhibit #15) stated in its included reporting letter:

> RE: RENTAL STUDY OF 59 DUNDAS STREET WEST, MISSISSAUGA, ONTARIO.
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> As requested, we have made an investigation and valuation analysis of the retail store located at the above address and submit herein our findings. As a result of the study carried out, it is our opinion that the fair market rental values of the within described property, are as follows:
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> April 1, 1978 -
>
> SIX HUNDRED DOLLARS PER MONTH
>
> ($600.00 per month)
>
> October 31, 1979 -
>
> SIX HUNDRED AND FIFTY DOLLARS PER MONTH
>
> ($650.00 per month)

(See also pp.12 - 14 of the Report).

On all the evidence, I cannot agree with Mr. Peppiatt's opinion. First, the average for these three rental properties in the plaza was $541./month (Evidence, p.255), the overall average for some nine of the properties in the area considered was $530./month (Evidence, p.255) and this included two long-term leases. Of all ten properties considered in the analysis, only two were at the figure of $600./month, and one other was slightly higher (Evidence, p.256).

Third, (and this is the significant point) Mr. Peppiatt finally came down to saying that his assessment was based on the fact that two properties (#69 Dundas and #71 Dundas) in the same plaza were paying $600./month (Evidence, pp. 217, 251, 258). However, in my opinion he just did not give sufficient weight to the fact that these two leases were for nine and ten year terms (for #71 Dundas, the evidence is sketchy as to when the lease commenced, but it could not have been before August 14, 1978, as the tenant, Good Guy's Pool Supplies occupied the premises at that point in time - Evidence, pp.200, 218). In my opinion, based upon all the evidence, the marketplace in these inflationary times would pay a higher rent at the inception of a long term (ning or ten year) lease, than for a shorter, three-year term, lease (Evidence, pp.221 - 234, 243 - 245, 247 - 251, 259). In my opinion, Mr. Peppiatt just did not give any, or at least the proper, weight to this factor (the length of term of the leases) in considering the two leases at $600./month. In my view, considering all the evidence, I do not think a three year lease for 59 Dundas St. W. from April 1, 1978 to March 31, 1981, would have brought more than $550./month and this amount might well be too high. In my judgment it is the highest amount that the marketplace would have paid. In my view, "the rent for comparable premises in like location" (Exhibit #4) would not be higher than $550./month for a three year term. I do not think Mr. Loconte wanted to rent to Mrs. Blake, but he knew he had to appear to give her the opportunity. He therefore demanded a rent above the market, of $675./month

and even though he subsequently lowered it to $600./month he was still demanding a rent above the market.

Mr. Loconte is a very emotional, self-righteous person. He is intimidating in his demeanour. He also impressed me as being a very hard-working, conscientious individual. I do not believe he bears any malice toward blacks or people of Mrs. Blake's racial origin. In my judgment, his behaviour is explained because of a preconception that blacks are not as financially capable or responsible as caucasians. Mr. Loconte, understandably, wanted a financially responsible tenant. He flew into a rage, and was discriminatory in his language and behaviour toward her when he first met her because, as I conclude from all the testimony, he thought he had a financially unsatisfactory tenant. He did at least ostensibly apologize to Mrs. Blake through Mr. Cunningham for what was said at his first meeting with Mrs. Blake.

I find on the evidence that the Respondent discriminated against the Complainant in his words and conduct toward her because of her race, colour, ancestry and/or place of origin, when he first met her, in the manner of initially receiving the payment of rents from her, in putting up a 'for sale' sign primarily to harass her, and in refusing to meaningfully try to negotiate the renewal rent while at the same time having the bailiff lock-up the premises without any warning to her. I find that these words and actions of the Respondent were unlawful acts of discrimination contrary to s.3(1)(b) of the Ontario Human Rights Code, R.S.O. 1970, c.318, as amended.

It is useful at this point to review the law relevant to this matter.

The Law

A definitive analysis as to the law pertinent to the subject of discrimination in Canada on the basis of "race, colour, national or ethnic origin" can be found in a paper "Race, Colour, National Or Ethinic Origin," prepared by Professor Walter S. Tarnopolsky for the Canadian Human Rights Commission. He mentions that "race" and "colour" are prohibited grounds of discrimination in every anti-discrimination Act in Canada, the United States and the United Kingdom as well as all relevant United Nations' instruments. However, these national and international instruments generally do not provide any definition of the terms "race" or "colour". Professor Tarnopolsky states:

> Of all the many complaints that have been dealt with by Boards of Inquiry under the various anti-discrimination Acts of the provinces where race or colour were concerned as being the grounds upon which discrimination was alleged, only one has attempted to provide a definition of the word "race" and this was the 1976 Board of Inquiry under the Alberta Individual's Rights Protection Act into the case of Ali v. Such. In this case, the complaint described the complainant as being "a black Trinidadian". The Board quoted from Webster's New World Dictionary (2d,ed.) and Black's Law Dictionary (rev.4th.ed.) and thereupon concluded that "race indicates broad or great divisions between mankind, and each of the definitions indicates that the races have physical pecularities that distinguish one race from the other". Applying this definition to the evidence the Board concluded that "Ms. Ali belongs to the Negroid race, and, characteristically, the Negroid race has black or dark skin". As mentioned before, no other Board of Inquiry has attempted a definition and, it would appear, no parties before a Board of Inquiry have on any other occasion raised the question of whether in fact it is possible to subdivide or classify human beings by "race" or "colour", or whether the particular complainant could be characterized as belonging to any such category. Rather, the cases have all dealt with such issues as whether the respondent had appreciation of the "race" or "colour" which the complainant either claimed as applying to him or her, or which appears to have been generally acknowledged by all parties at the Inquiry upon observation of the complainant to apply to him or her.[1]
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[1] At pp.2, 3.

> In a way all this attempt to define "race" and "colour" is somewhat irrelevant to the administration of anti-discrimination legislation as the real concern is not with the "race" or "colour" or other hereditary origin of the individual who has been discriminated against, but rather with what the respondent perceives the complainant to be. Thus, even if a person is seven-eighths of European origin and one-eighth of African origin, if the respondent perceives that person to be a "Negro" or "black" and that characteristic or origin is the ground upon which the person is discriminated against, then the discrimination is on the grounds of "race" or "colour". This is why only one Board of Inquiry has bothered to try to define race. In all the others, where the basis of the complaint was discrimination on grounds of "race" alone, or "race or colour", or "race and ancestry", or "race, colour, place of origin", and this includes some three Boards of Inquiry in Alberta, four in British Columbia, one in New Brunswick, four in Nova Scotia, eleven in Saskatchewan, and about sixty in Ontario, there was no attempt to define "race" or "colour" or "ancestry" or "place of origin".[2]

Professor Tarnopolsky also discusses the meaning of the terms, "nationality, ancestry or place of origin" and says,

> There is really no direct judicial authority in Canada distringuishing between the terms "national origin", and "nationality" and "citizenship". However, the few that do make a direct reference to nationality and/or citizenship conform to what has been argued here, i.e., that in the legal sense of describing one's tie to a country, the words are used synonymously.[3]
>
> . . .
>
> One must conclude that although the term "nationality" has been used in a political-ethnological sense of one's membership in a "nation", and may thus remain with a person regardless of what that person's legal tie to a country is, the other sense in which it has been used is synonymously with "citizenship" in the sense of one's status arising out of a mutual relationship of protection by and allegiance to a particular country. In other words, although the term "citizenship" might not include all the senses in which "nationality" has been and continues to be used, the word "nationality" when used in a legal sense is synonymous with the term "citizenship".
>
> One could go further and say that to the extent that the word "nationality" is not synonymous with "citizenship" is the extent to which it describes one's "national origin", or, to use the term in the Ontario Human Rights Code, one's "ancestry or place of origin".[4]

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[2] At p. 14.

[3] At p. 26.

[4] At pp.28, 29.

It is useful to review some of the Canadian decisions that have dealt with discrimination in respect of occupancy on the basis of race, colour, nationality, ancestry or place of origin of the complainant.

In Jones v. Huber (Ontario, 1976) a black woman who wished to view an apartment on behalf of her sister was denied access by the owner who claimed to deny it on the grounds of the racial prejudices of his tenants. He claimed that he would sustain economic losses as some of his tenants had said that they would leave if he permitted black individuals to live there.

It was held that: "race is an impermissible factor in an apartment rental decision and cannot be brushed aside because it was not the sole reason for the discrimination. So long as it was one of the considerations, it will constitute a violation of the Ontario Human Rights Code" (p.4).

It was also held that "(f)ear of economic loss cannot justify discriminatory conduct on the part of the Respondents" (p.4).

No special damages were assessed as the Board could not surmise whether or not the woman would have agreed to rent the premises in question if she had seen them.

General damages were ordered in the nominal amount of $50, because the woman herself was not the direct victim as her sister had acted as her agent, but that she did experience a degree of indignity in learning of the incident.

In Lam v. McCan (Ontario, 1976) the landlord gave notice to quit upon grounds which would have been acceptable under the Landlord and Tenant Act R.S.O. 1970, but the tenants believed the real reason to be racial discrimination. The complainants moved and the landlord subsequently advertised the premises. It was held that the landlord's substantial or primary reasons in terminating the tenancy were not those stated in the notice to terminate but rather were rooted in racial discrimination which constitutes a breach of the Ontario Human Rights Code, s. 3 "even though other and proper grounds may or do exist on the basis of which

the landlord could terminate the tenancy" (p.5).

The complainants did not want reinstatement of the lease.

General damages in the amount of $350.00 were assessed against the landlord.

In addition, special damages were ordered in the amount of $150.00 which was made up as follows:

(1) $100.00 for special expenses incurred as a result of being forced to move.

(2) $50.00 as a credit for the cost of redecorating materials.

In Nawagesic v. Crupi (Ontario, 1978) it was held that the complainant had been discriminated against by being denied any opportunity to rent the housing accomodation available becuase of his race, colour or ancestry.

General damages in the amount of $500.00 were awarded for the injury to the feelings and dignity of the complainant caused by the landlord's discrimination. A letter of apology from the landlord to the complainant was also ordered, as was a letter from the landlord to the Ontario Human Rights Commission assuring compliance with the Ontario Human Rights Code in the future.

In Nawagesic v. Rauman (Ontario, 1978) the landlord refused to rent the accomodation available to the complainant, a Canadian Indian, until "other people have seen the apartment." (p.6). The complainant believed this action by the landlord to be based on discrimination whereas the landlord claimed that it was due to skepticism as to the complainant's means of support.

It was held that mere suspicions of discrimination were not enough and on a balance of probabilities the landlord was given the benefit of the doubt. The failure of meaningful communication as between the two principals was found to be the source of the complaint and the majority of the responsibility for this failure and for the resultant necessity of a Board of Inquiry was attributed to the landlord.

In Maraj v. Zuonko and Kozlovac (Ontario, 1975) the respondent having acquired an apartment building in which the complainant, a Trinidadian of East In-

dian descent, was resident, raised the rent of the complainant and verbally abused him on the basis of race and colour.

During the recess following the hearing, the parties arrived at a compromise. As a result the only finding made is that the respondents did discriminate against the complainant in contravention of 3(1)(b) of the Ontario Human Rights Code.

The respondents were ordered to pay the complainant $300.00 as compensation and damages; to write a letter of apology to the complainant; and to offer to rent to the complainant the next available apartment in the building.

Further, the respondents were ordered to post "Ontario Human Rights Code Cards"; to notify the Ontario Human Rights Commissions of vacancies as they occur for a period of one year; to write to two ethnic clubs advising them of their fair rental policy and to write to the Ontario Human Rights Commission assuring compliance with the Ontario Human Rights Code.

In the case of Jahn v. Johnstone (Ontario, 1977) the complainant charged that the landlord discriminated against her by interfering with her quiet enjoyment of the dwelling on account of the race, colour and place of origin; not of herself, but of her guest, a black man. This was the first case "to consider the meaning and application of the provision forbidding discrimination because of the characteristics, not of the tenant or would-be tenant, but of any other person or class of persons," a ground which was added to the Code by Statutes of Ontario 1972, c.119, section 4.

It was held that the complainant's right to quiet enjoyment was infringed by the respondent's demands that the complainant restrict her visitors to white people and that this infringement constituted discrimination against the complainant.

It was also held that the respondent contravened section 3(1)(b) of the Human Rights Code by discriminating against the complainant on account of the race of another person.

The respondent was ordered to pay general damages of $200.00. Special da-

mages were also ordered to compensate the complainant for out-of-pocket expenses in moving and for the difference in the cost of the rent plus heating expenses at the premises of the respondent on the one hand and the rent at her new residence for the interval between the lodging of the complaint and its hearing by the Board.

The order also contained the following requirements: letters of apology to the complainant and her guest; a letter of assurance of future compliance to the Ontario Human Rights Commission and notification of the Ontario Human Rights Commission of vacancies, on the part of the respondent.

In Copenace v. West (Ontario, 1979) an agent of the landlady rented her house to the complainants, a Native Indian family of three. The landlady was unaware of the origin of the new tenants at the time. The hosue had previously been rented to Native Indians for 34 years and the last tenants had not behaved in what the Landlord and Tenant Act, R.S.O. 1970 would deem a "tenant-like" manner. The new tenants, the complainants, were very good tenants. The landlady discovered the ethnic origin of the complainants when she visited and told the new tenants that they had to clean up the garbage in the yard which had been left by the previous tenants or face notice to vacate, which was subsequently given. The question considered by the Board was whether or not the respondent was motivated by the fact that the complainants were Native Indians.

It was held that the respondent did in fact discriminate contrary to section 3(1)(a) of the Ontario Human Rights Code.

The respondent was ordered to pay the male and the female complainant each $900.00 for general damages and to pay the male complainant an additional $200.00 for loss of income stemming from the eviction.

The respondent was also required to send a letter of apology to the complainant and to offer them the first available vacancy in her rental premises.

Also, the respondent was required to notify the Ontario Human Rights Commission of any vacancies for a period of 2 years and that the Commission be permitted

to monitor her rental practices during this time.

In Greyeyes v. Charneira (Saskatchewan, 1975) the respondent refused to rent a basement suite to the complainants who were of Canadian Indian ancestry and launched a virulent tirade condemning Indians in general.

It was held that the respondent had contravened Section 9 of The Saskatchewan Bill of Rights, R.S.S. 1965, Chapter 378 by discriminating on the grounds of race and ancestry in denying the rental of living accomodation.

The respondent was ordered to pay to the complainant: general damages in the amount of $300.00, and special damages for motel accomodation expenses of $54.00; the full amount to be paid within 30 days.

The respondent was also ordered to report any future vacancies to the Saskatchewan Human Rights Commission.

In Bird v. Gabel (Saskatchewan, 1974) the respondent refused to rent a motel room to the complainant, a Saulteaux Indian, who then made a complaint to the R.C.M.P.

It was held that the respondent was guilty of discrimination, on the basis of race and ancestry; and that, following The Gabbidon and Galas Inquiry (Ontario, 1973) it is unnecessary to lead evidence of humiliation and impaired feelings.

General damages in the amount of $100.00 were awarded to the complainant.

The respondent was required to send a letter of apology to the complainant, a letter of assurance of future compliance to the Saskatchewan Human Rights Commission and to post "Declaration of Management Policy" Cards provided by the Commission.

In Lavallee v. Lloyd Realty Development Ltd. and Lloyd Rogers of Regina (Saskatchewan, 1976) the complainant, a native Indian woman, was not given accomodation but a white woman who was staying at the same transition house and whose application was made later got accomodation promptly.

It was held that an employee of the respondent had discriminated on illegal grounds and that the respondent had not made adequate efforts to remedy the situa-

tion.

General damages of $300.00 were awarded to the complainant, following Greye-yes v. Charneira (Saskatchewan, 1975).

The Board also ordered the respondent to conduct a proper investigation of the complainant in the event of her re-application for accomodation.

In Norris v. Michalski (Saskatchewan, 1977) the landlord refused to rent accomodation to an Air Force man whose wife was black.

It was held that discrimination had occurred.

General damages were awarded in the amount of $300.00; and the respondent was ordered to offer the first available accomodation to the complainant and to send written assurances of compliance with the Human Rights legislation of the Province of Saskatchewan to the Saskatchewan Human Rights Commission.

In Ali v. Such (Alberta, 1976) the complainant, a Black Trinidadian, was refused the opportunity of renting an apartment because of her race.

It was held that the respondent had denied accomodation to the complainant on the grounds of race in contravention of Section 4(a) of The Individual's Rights Protection Act.

No specific damages were assessed as the claims made were for approximate amounts and the complainant was unavailable for questioning on the matter.

No general damages were assessed.

A recommendation was made that the Alberta Human Rights Commission obtain assurances from the respondent that he would refrain from similar or other contraventions in the future.

In Oxouzidis and Oxouzidis v. Chahel and Chahel (British Columbia, 1975) Mr. Chahel refused to rent accomodation to the complainants because Mrs. Oxouzidis was a native Indian and in the opinion of the respondent "they were not good tenants." (p.5).

It was held that the respondents contravened Section 9(a) of the B.C. Human Rights Act by discriminating on the grounds of race.

As the complainants no longer wished to rent the accomodation and sought only to have the respondents restrained from future contraventions, no order as to damages was made. The Board ordered the respondents to refrain from committing the same or similar contraventions.

In Khan v. Pieschel (British Columbia, 1975) an East Indian family was denied the rental of a trailer in a trailer park and evicted from the camp ground where they had been tenting after refusing to pay a rental fee of $20.00 per day.

It was held that the excessive rental fee demanded was based on a discriminatory attitude of the respondent toward the race of the complainant.

The Board of Inquiry ordered the respondent to send a letter of apology to the complainant.

No damages were sought.

In Sam v. Tymchischin (British Columbia, 1976) a hotel manager refused to rent a room to a native Indian woman on the ground of her race. Subsequently he offered to rent to a white woman and in the course of the conversation denounced Indians as a group and said he would not rent to them.

It was held that the behaviour of the respondent was a flagrant discriminatory act under Section 3 of the B.C. Human Rights Code; and was unquestionably attributable to the racial prejudices of the respondent.

The Board issued an order that the respondents refrain from committing further contraventions.

General damages in the amount of $500.00 were awarded to the complainant.

The respondent was ordered to pay the complainant $750.00 by way of costs as well.

In Nelson v. Gubbins and Byron Price and Associates Ltd. (British Columbia, 1975) the complainants, a native Indian couple were denied the right to occupy premises as tenants by the respondents Gubbins who served as managers for the respondent Byron Price.

It was held that there was a representation as to the availability of space

for occupancy; and that the respondents did deny to the complainants the right to occupy space because of their race in contravention of Section 5(1)(a) of the B.C. Human Rights Code.

Aggravated damages for humiliation in the amount of $150.00 were awarded to the complainant. Byron Price was found vicariously responsible and therefore jointly liable with Mrs. Gubbins for payment.

On appeal, the complaint on grounds of vicarious liability against Bryon Price and Associates was dismissed as the imposition of vicarious liability was a common law relief which the Board was without authority to grant.

In Morgan v. Nodland (Nove Scotia, 1974) the complainants rented accomodation from the respondent by agreement between Mrs. Morgan who is white and Mr. Nodland. When Mr. Nodland first saw Mr. Morgan, who is black, painting the living room he was obviously shocked. The respondent left, then returned and told Mrs. Morgan that he would not rent to them.

It was held that the respondent denied occupancy to Mr. Morgan because of his colour.

Special damages totaling $225.00 were awarded to Mr. Morgan in compensation for a cash deposit of $50.00, the cost of power hook up, transportation to and from the premises for the purposes of cleaning, painting and moving furniture and lost wages. The respondent was also ordered to post a Nova Scotia Human Rights Scroll on the premises.

In Pate v. Wonnacott (Nova Scotia, 1970) the respondent refused rental accomodation to the complainant who was black despite his having good references.

It was held that the basis of such refusal was discrimination on the grounds of colour and race.

This was the first case in Nova Scotia to go to the stage of PUblic Inquiry and it followed Amber v. Leader (Ontario, 1970).

The Board ordered the respondent to make an apology to the complainant, as well as an offer of accomodation at the earliest occurrence of a vacancy.

Section 14c. of The Ontario Human Rights Code provides that after hearing a complaint a board shall decide whether or not any party has contravened the Act and

> (b) may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision or to make compensation therefor.

If the Board's decision is that the landlord has breached the Code by his rental practices, typical orders include any or all of the following measures:

1) The posting of The Ontario Human Rights Code in the lobby of the apartment building along with a declaration that the owner subscribes to the practices recommended by the Code.

2) A monetary award to cover extra expenses incurred by the complainant in finding alternate accommodation. The complainant is often remunerated for extra transportation costs and occasionally remunerated for the difference in rent between the accommodation which he or she eventually leased and the accommodation denied to him if the two premises were comparable (ie. the same size and type of accommodation) and if the accommodation eventually rented was more expensive than the accommodation denied to the complainant.

3) An order directing the landlord to offer the next suitable vacancy to the complainant.

4) An order directing the landlord to contact local minority group associations (usually restricted to the minority group associations representing the minority group of the complainant) when vacancies occur to advertise such vacancies before the landlord advertises the vacancies in local papers. Thus, the minority group offended should be offered the vacancies before the general public. The order may be to have the landlord inform the Ontario Human Rights Commission as to any vacancy in premises owned by the landlord.

5) An award of general damages in the form of money to be paid by the landlord to the complainant to compensate for injury to feelings and dignity. An articulate view of one Board of Inquiry with respect to general damages is helpful:

> "In my opinion, a Board of Inquiry has a fair amount of leeway in setting the quantum of general damages before it can be said that the Board has overstepped its functions and taken on the job of "punishing" offending conduct instead of "compensating" its victims. The Legislature has determined that a court may award a fine up to $1,000.00 if it finds, after a trial, that a breach of any provision of the Code has occurred (see section 15(c) of the Code). This amount suggests two things. First of all, it is a guide to the level of community disapproval for offenses against the standards of behavior set out in the Code; that level is, by this token, reasonably high. One can keep that in mind when assessing the compensation for injury to dignity that should be paid to a member of the community who has suffered discrimination. Secondly, the amount of penalty exigible after a criminal trial, with its higher standards of proof than those of a Board of Inquiry, does suggest an upper limit on the quantum of general damages which can be awarded without passing from the realm of compensation."[1]

As a general note to most of the abovementioned monetary awards, I might add that I find Boards of Inquiry somewhat conservative in the sums awarded. Even when damages are awarded to compensate the complainant for extra expenses incurred, Boards appear to tend not to compensate for all the probable expenses. General damages for injury to feelings and dignity have tended to be between one and two hundred dollars. More recently, however, much higher awards have been given.[2]

I have found on all the evidence that Mr. Loconte discriminated against Mrs. Blake because of her race, colour, ancestry and/or place of origin. Mr. Loconte himself is an immigrant whose ancestry is that of a people who have made a tremendously valuable contribution to Canada in every respect. He seemed to me to be a hard-working citizen who has done well in this country and who has made his own significant contribution. I doubt that he bears

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[1] In the matter of Jahn v. Johnstone, September 16, 1977 at page 22, Mary Eberts, Board of Inquiry.

[2] See in the matter of Morgan v. Toronto General Hospital, October 14, 1977, Walter S. Tarnopolsky, Board of Inquiry, in which $1700 was awarded as general damages for injury and feelings and dignity because of a contravention of section 4(1)(a) of the Code.

any conscious malice toward blacks. I infer that he acted as he did toward Mrs. Blake because his view of blacks is that of an unfavourable and incorrect stereotype. His fixed mental impression is that someone who is black cannot be a financially responsible tenant, and that he, as landlord should not rent to a black, or if forced to have a black tenant, can treat her in a discriminatory manner because he would prefer her to cease to be a tenant simply because she is black. Mr. Loconte fails to appreciate that in Canada human rights and the dignity of every person are not subsidiary to property rights.

The Ontario Human Rights Code includes within its Preamble and section 9 the following precepts:

> Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
>
> An Whereas it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin.
>
> . . .
>
> s. 9 . . . The Commission shall
>
> (a) forward the principle that every person is free and equal in dignity and rights without regard to race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin;

The belief in the fundamental equality of all persons as expressed in The Ontario Human Rights Code is fundamental to the fabric of our society.

> Every statement about the nature of racial discrimination is based, more or less explicitly upon an idea of the quality of human beings, which has advanced to its present form only relatively recently. The origins of this idea of human equality may be traced to the traditional Judaeo-Christian belief in Fatherhood of God and hence in the brotherhood of men, each with equal humanity and significance.

. . .

> This perception of the fundamental equality of men as men, despite the manifold differences between individuals, lies at the heart of liberal and democratic thought in the West.[1]

The public policy underlying The Ontario Human Rights Code goes to the very root values of Canada as a nation, and Canadians as a people. It is critical to our society to maintain and enhance the policy underlying the Code through diligent surveillance and enforcement of its provisions.

The evidence of Mrs. Blake is that she suffered a great deal because of her treatment by Mr. Loconte. She felt humiliation and fear. She is a responsible, diligent individual who is doing her best to succeed in life and to make a positive contribution to society. Given the very serious, continuing affront to Mrs. Blake's dignity and feelings, and taking into account all the circumstances of this case, I award Mrs. Blake $800.00 in general damages for the injury to her feelings and dignity caused by Mr. Loconte's discrimination against her. Mrs. Blake also suffered $209.80 in expenses (Exhibit #9) because of Mr. Loconte's having a bailiff lock-up the premises, which I have found on the evidence to be an act of discrimination. As I have also found, in my findings, the maximum rent that the premises would have brought April 1, 1978 to March 31, 1981 is $550. per month. This means that to March 31, 1980, Mrs. Blake will have paid $1200. ($50. x 24 months) more rent than she would have, but for the situation she is in which I have found to be due to Mr. Loconte's acts of discrimination toward her. The continuing rent should be, on my findings, $550. a month for the balance of the renewed lease, ie. to March 31, 1981.

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1 A. Lester and G. Bindman, Race and Law, p. 73-4, Penguin, Eng. 1976.

O R D E R

For the foregoing reasons, this Board of Inquiry orders the following:

1. The rent for the premises known as 59 Dundas St. W., Mississauga payable by Mrs. Etna Blake, the Complainant, to Mr. N. Loconte, the Respondent, for the renewed lease for the term, April 1, 1978 to March 31, 1981, is $550.00 per month.

2. That Mr. N. Loconte, the Respondent, pay to Mrs. Etna Blake, the Complainant, the sum of $800. for damage to her dignity and feelings caused by his contravention of The Ontario Human Rights Code, such payment to be made to Mrs. Blake before May 1, 1980.

3. That Mr. N. Loconte, the Respondent, pay to Mrs. Etna Blake, the Complainant, the sum of $209.80 as special damages, in reimbursement of the expense she was put to by his having a bailiff lock-up the premises which I have found to be an act of discrimination in contravention of The Ontario Human Rights Code, such payment to be made to Mrs. Blake before May 1, 1980.

4. That Mr. N. Loconte pay to Mrs. Blake the sum of $1200.00 as special damages, representing the amount of $50.00 per month in excess of the rent that should have been charged ("the rent for comparable premises in like location" Exhibit #4) which I have found resulted from his acts of discrimination in contravention of The Ontario Human Rights Code, such payment of $1200. to be made by way of Mrs. Blake setting-off $100.00 per month against the rental payment of $550.00 due in each of the remaining twelve months of the lease. The net rent payable by Mrs. Blake to Mr. Loconte for the period April 1, 1980 to March 31, 1981, after taking into account the set-off of $100.00 per month is, therefore, $450.00 per month.

5. That Mr. N. Loconte, the Respondent, shall pay, if Mrs. Blake ceases to be a tenant for any reason in the premises of 59 Dundas St. West, Mississauga before March 31, 1981, forthwith to Mrs. Blake the balance of the $1200.00 referred to in #4 above still owing to Mrs. Blake at that point in time, that

is, the remaining amount of the $1200.00 not set-off to that point in time.

DATED at Toronto this 12th day of March, 1980.

Peter A. Cumming

Board of Inquiry